

Phillip Wm. Lear  
Lear & Lear PLLC  
808 E South Temple Street  
Salt Lake City, UT 84102  
Telephone: (801) 538-5000  
Facsimile:(801) 538-5001  
Email: [phillip.lear@learlaw.com](mailto:phillip.lear@learlaw.com)  
Local Attorney for Linda P. Smith

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

LINDA P. SMITH,

*Plaintiff*

v.

XAVIER BECERRA, in his capacity  
as the Secretary of the United States  
Department of Health and Human  
Services,

*Defendant*

Case No. 1:21-cv-00047-HCN-DBP

APPENDIX OF EVIDENCE IN  
SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND TO VACATE

JURY TRIAL DEMANDED

Judge Howard Nielson, Jr.  
Magistrate Judge Dustin B. Pead

Pursuant to DUCivR 56-1, Mrs. Smith files this Appendix of Evidence. Given that the Court's decision is supposed to be largely based on the certified record filed with the Court, the volume of them, and the spirit of the Rule, Mrs. Smith is not attaching copies of the record cites. Should the Court wish Mrs. Smith to do that, of course, she is prepared to.

<b>Exhibit #</b>	<b>Description</b>	<b>Source</b>
Exhibit A	Declaration of James Pistorino	James Pistorino
Exhibit B	CMS 1682-R	<a href="https://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings/Downloads/CMS1682R.pdf">https://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings/Downloads/CMS1682R.pdf</a> . See also AR3002-3014, AR6119-6134.
Exhibit C	Local Coverage Article (LCA) A52464	<a href="https://www.cms.gov/medicare-coverage-database/view/article.aspx?articleId=52464">https://www.cms.gov/medicare-coverage-database/view/article.aspx?articleId=52464</a>
Exhibit D	Local Coverage Determination (LCD) L33822	<a href="https://www.cms.gov/medicare-coverage-database/view/lcd.aspx?lcdid=33822">https://www.cms.gov/medicare-coverage-database/view/lcd.aspx?lcdid=33822</a>
Exhibit E	Medicare Summary Notice (MSN) dated July 30, 2021	Mrs. Linda Smith
Exhibit F	Complaint dated April 5, 2021	See Dkt. #2
Exhibit G	Answer dated August 24, 2021	See Dkt. #24.

Dated: September 7, 2021

Respectfully submitted,

PARRISH LAW OFFICES

/s/ James C. Pistorino

James C. Pistorino

*Attorneys for Plaintiffs*

LEAR & LEAR PLLC

/s/ Phillip Wm. Lear  
Phillip Wm. Lear  
Attorneys for Plaintiff